



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

**SUBJECT: PROTEST OF A NEGATIVE
DECLARATION FOR A
CONDITIONAL USE PERMIT
(CP02-01-002)**

DATE: February 18, 2003

COUNCIL DISTRICT: 10

BACKGROUND

This is a protest of a Mitigated Negative Declaration (MND) prepared for a Conditional Use Permit to allow a 3,600 square foot building addition to an existing church for a child care facility for up to 68 children and Sunday school classrooms on a 0.94 gross acre site in the R-1-8 Residence Zoning District located on the east side of Bose Lane approximately 100 feet southerly of Culligan Boulevard. The site is currently occupied with a 6,700 square foot church with surface parking at the rear and side of the lot.

The Negative Declaration was circulated on December 19, 2002 to property owners/occupants within 1,000 feet of the project site. One letter protesting the adequacy of the Negative Declaration were filed in the Department of Planning, Building and Code Enforcement on January 7, 2003.

ANALYSIS

The Draft Negative Declaration for this project was prepared in conformance with the California Environmental Quality Act (CEQA). Section 21080 of the CEQA Statute and Section 15070, subd. (g) of the Guidelines specify that a Mitigated Negative Declaration may be prepared where the Initial Study shows that there is no substantial evidence that the project may have a significant effect on the environment. The Initial Study prepared for this project examined the potential for the project to result in significant environmental impacts. It concluded that the project would not result in a significant environmental impact and would not require the preparation of an Environmental Impact Report (EIR).

The City of San Jose received one letter of protest on the Draft Mitigated Negative Declaration during the public review period from December 19, 2002 through January 8, 2003. The 5-page protest letter from Glaspy & Glaspy, Inc., on behalf of Thomas Rouse and Torbin Rasmussen, is attached to this staff report. The protestants identify several issues of contention, including traffic, project location, project stacking and drop-off, parking, parking and building setbacks, noise, privacy, and landscaping. Of the issues listed in the protest letter, all (Comments No. 2-5 & 7-9) but two are considered project-related issues and are summarized in the staff report. The two environmental issues relating to traffic and noise are addressed in this staff report (Comments No. 1 & 6). Responses to the MND protest letter from the Department of Public Works and Edward L. Pack Associates, Inc. are also attached to this staff report.

PROTESTANT COMMENT 1: The protestants believe the traffic report poses inaccuracies. They cite a requirement for a previously approved project located at the southeast corner of El Paseo Drive and Camden Avenue (CP99-026) to eliminate cut-through traffic through residential neighborhoods. They indicate concerns for the use of El Paseo Drive as a means of egress from the project site and feel that traffic imposed upon Bose Lane in the area of the project will be significant.

STAFF RESPONSE TO COMMENT 1:

The in-house traffic report notes that the intent of the project is to take advantage of the surrounding residential neighborhoods as a customer base for the childcare facility, consistent with most childcare facilities; therefore residential streets will be utilized to access the site. The objective of the traffic report is to evaluate conformance to the City's Transportation Level of Service Policy (5-3).

Average Daily Traffic (ADT) information is included in the traffic report for information only. Council Policy 5-3 requires traffic analysis only during the peak travel periods. Therefore, the ADT does not affect the results of the report. However, the protest is correct in noting that the traffic report stated that the ADT on Bose Lane is 3,120 trips. This reflects the ADT for Bose Lane south of Camden Avenue. The project is located on Bose Lane, north of Camden Avenue, where the ADT is 890 trips based on the latest traffic counts available for this segment of Bose Lane (gathered in September 2001). The typical volume for a two-lane residential street is approximately 2,500 trips per day. The trips generated by this development will result in approximately 1,210 trips per day (890 existing trips + 320 project trips) along Bose Lane north of Camden, well below the typical volume for a two-lane residential street.

Also, it is important to note that the Holy Spirit School is a private elementary school with approximately 450 enrolled students (grades K-8). This does not reflect a traffic scenario equivalent to a 68 student pre-school and day care center. The amount of traffic exiting the site does not justify the prohibition of right turns from the site. The City's Department of Transportation (DOT) may consider prohibiting right turns, but, as noted above, the project is meant to serve the surrounding residential neighborhoods. The prohibition of right turns from the site will not prevent trips through the neighborhood, it will simply redirect them to different neighborhood streets.

The project is expected to generate 61 AM peak trips and 64 PM peak trips. These, in turn, break down to 30 inbound trips and 31 outbound trips in the AM, and 32 inbound trips and 32 outbound trips in the PM. Based on the City of San Jose's Council Policy 5-3, the number of trips generated by this site is considered acceptable and does not significantly affect the level of service at any of the signalized intersections analyzed in the traffic report, including Almaden Expressway and Camden Avenue. The Department of Public Works determined that the project will not generate traffic impacts that would significantly reduce the level of service to create a potentially significant environmental impact.

PROTESTANT COMMENT 6: The protestants believe the noise report to be confusing and erroneous and that the noise level calculations were performed wrong. The protestants indicate that the recommended sound abatement wall does not encapsulate the entire building and play area nor does it do anything to alleviate the traffic noises in the parking lot and along the access driveways. They question the adequacy of the recommended sound attenuation fence and request an explanation of the conclusions reached by the noise analyst.

STAFF RESPONSE TO COMMENT 6:

The project applicant is proposing to provide a 6-foot sound attenuation wall in accordance with the recommendation of the sound study. The project is also conditioned to include a limitation on the play hours, as well as, the number of children outside during play hours. According to the noise analyst, the 6-foot high noise barrier was designed to reduce play noise from 60-, 58- and 59-dB DNL to 51-52 dB DNL in the rear yards of the homes so that not only would the project generate less than 55 dB DNL on its own, it would not cause the combined or cumulative (existing ambient + project) noise exposure to exceed 55 dB DNL.

The fence need not encapsulate the building in that the building itself will provide acoustical protection when the children are indoors and the barrier is only necessary for the main play areas that are shielded by the barrier. As the ambient noise exposure in the area was measured to be 52 dB DNL, the project should not generate more than 52 dB DNL. The noise analyst indicated that noise from the access driveways will be very low and will not cause project noise exposures to be excessive, or produce any type of negative impact per City of San Jose standards. Therefore, the noise attenuation barrier would not need to be extended beyond the play area to the parking and circulation areas. The mitigation measures incorporated into the project will reduce noise impacts to a less than significant level.

CONCLUSION

The California Environmental Quality Act (CEQA) specifies that the lead agency may adopt a Negative Declaration if it determines, based upon substantial evidence in the record, that a proposed project would not have a significant effect on the environment. Substantial evidence includes (1) fact, (2) a reasonable assumption predicated upon fact, or (3) expert opinion supported by fact. Substantial evidence is not an argument, speculation, unsubstantiated opinion

or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

The Director of Planning issued and adopted a Mitigated Negative Declaration based upon the initial study and other evidence in the record. No substantial evidence exists to support a fair argument that the project will have a significant effect on the environment. While it is known that some public controversy exists regarding the project itself, no substantial evidence has been submitted to indicate that the controversy is relevant to the environmental impacts of the proposal. Preparation of an EIR for this project would not disclose any more substantial information regarding the environmental impacts of the project than is currently known.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission are to (1) uphold the Negative Declaration for the proposed project, or (2) require the preparation of an EIR.

RECOMMENDATION

The Director of Planning, Building & Code Enforcement recommends that the Planning Commission uphold the Mitigated Negative Declaration prepared for the proposed project.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

RE:TE

Attachments

c: Thomas Rouse, 6417 Bose Lane, San Jose, CA 95120
Torbin Rasmussen 101 Culligan Boulevard San Jose, CA 95120
Luke Stamos 6118 Oak Forest Way San Jose, CA 95120